

House Bill 1129 (AS PASSED HOUSE AND SENATE)

By: Representatives Lewis of the 15th, Stephens of the 164th, Williams of the 4th, O'Neal of the 146th, Parrish of the 156th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxation, so as to provide for a program of tax refunds for companies creating and expanding certain tourism attractions; to provide for a short title; to define terms; to provide for legislative findings; to provide for conditions of eligibility and approval; to provide for procedures, conditions, and limitations; to provide for powers, duties, and responsibilities of the commissioner of economic development and the Department of Economic Development, the state revenue commissioner and the Department of Revenue, the director of the Office of Planning and Budget, and the governing authorities of counties and municipalities; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxation, is amended by adding a new article to read as follows:

"ARTICLE 5

48-8-240.

This article shall be known and may be cited as the 'Georgia Tourism Development Act.'

48-8-241.

As used in this article, the term:

(1) 'Agreement' means a tourism attraction agreement entered into, pursuant to Code Section 48-8-245, on behalf of the Department of Economic Development and an approved company, with respect to a tourism attraction project.

(2) 'Approved company' means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other entity that

1 is seeking to undertake a tourism project pursuant to Code Section 48-8-245 and is
2 approved, pursuant to subsection (b) of Code Section 48-8-244, by the commissioner of
3 economic development and by the governing authority of the city where the tourism
4 attraction project is to be located, if within a city, or otherwise, by the governing authority
5 of the county where the tourism attraction project is to be located.

6 (3) 'Approved costs' means:

7 (A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,
8 suppliers, deliverymen, and materialmen in connection with the acquisition,
9 construction, equipping, and installation of a tourism attraction project;

10 (B) The costs of acquiring real property or rights in real property and any costs
11 incidental thereto;

12 (C) All costs for construction materials and equipment installed at the tourism
13 attraction project;

14 (D) The cost of contract bonds and of insurance of all kinds that may be required or
15 necessary during the course of the acquisition, construction, equipping, and installation
16 of a tourism attraction project which is not paid by the vendor, supplier, deliveryman,
17 or contractor or otherwise provided;

18 (E) All costs of architectural and engineering services, including but not limited to:
19 estimates, plans and specifications, preliminary investigations, and supervision of
20 construction and installation, as well as for the performance of all the duties required
21 by or consequent to the acquisition, construction, equipping, and installation of a
22 tourism attraction project;

23 (F) All costs required to be paid under the terms of any contract for the acquisition,
24 construction, equipping, and installation of a tourism attraction project;

25 (G) All costs required for the installation of utilities, including but not limited to:
26 water, sewer, sewer treatment, gas, electricity, and communications and including
27 off-site construction of the facilities paid for by the approved company; and

28 (H) All other costs comparable with those described in this paragraph.

29 (4) 'Incremental Georgia sales and use tax' means those state sales and use taxes
30 generated by the project above the amount of sales and use taxes generated by the
31 previous use of the property on which the project is located.

32 (5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment
33 facility; a sports stadium or arena; an area of natural phenomenon or scenic beauty; a
34 convention hotel and conference center; an automobile race track with lodging and
35 restaurant and other tourism amenities; a golf course facility with lodging and restaurant
36 and other tourism amenities; marinas and water parks with lodging and restaurant

1 facilities; or an entertainment destination center designed to attract tourists to the State
2 of Georgia, subject to the following conditions:

3 (A) A tourism attraction shall include commercial lodging facilities if the facilities
4 constitute a significant portion of a tourism attraction project or the facilities are to be
5 located on recreational property leased from a county, a municipal corporation, the
6 state, or the federal government; and

7 (B) A tourism attraction shall not include:

8 (i) Facilities that are primarily devoted to the retail sale of goods, shopping centers,
9 restaurants, or movie theaters; or

10 (ii) Recreational facilities that do not serve as likely destinations where individuals
11 who are not residents of this state would remain overnight in commercial lodging
12 facilities at the tourism attraction project.

13 (6) 'Tourism attraction project' or 'project' means the real estate acquisition, including the
14 acquisition of real estate by a leasehold interest with a minimum term of 30 years,
15 construction, and equipping of a tourism attraction; the construction and installation of
16 improvements to facilities necessary or desirable for the acquisition, construction, and
17 installation of a tourism attraction project, including but not limited to surveys;
18 installation of utilities, which may include water, sewer, sewage treatment, gas,
19 electricity, communications, and similar facilities; and off-site construction of utility
20 extensions if paid for by the approved company.

21 48-8-242.

22 The General Assembly finds and declares that the general welfare and material well-being
23 of the citizens of this state depend in large measure upon the development of tourism in this
24 state; that it is in the best interest of this state to induce the creation of new tourism
25 attractions and the expansion of existing tourism attractions within this state in order to
26 advance the public purposes of relieving unemployment by preserving and creating jobs
27 that would not exist if not for the sales and use tax refund offered by the State of Georgia
28 to approved companies and preserving and creating sources of tax revenues for the support
29 of public services provided by this state; that the purposes to be accomplished under the
30 provisions of this article are proper governmental and public purposes for which public
31 moneys may be expended; and that the inducement of the creation and expansion of
32 tourism attraction projects is of paramount importance to the economy of this state,
33 mandating that the provisions of this article are to be liberally construed and applied in
34 order to advance public purposes.

1 48-8-243.

2 (a)(1)(A) In consideration of the execution of the agreement, each approved company
3 shall be granted a sales and use tax refund from the incremental Georgia sales and use
4 tax and all local sales and use taxes on the sales generated by the approved company
5 and arising at the tourism attraction.

6 (B) In consideration of the execution of the agreement, each approved company shall
7 be granted a sales and use tax refund from the incremental Georgia sales and use tax
8 and all local sales and use taxes on the sales generated by the approved company that
9 are attributable to and connected with any project to be a part of or an addition to an
10 existing tourism attraction. Each approved company shall keep and maintain annual
11 records that delineate the increase in sales created by a project at an existing tourism
12 attraction in order to be eligible to be granted a refund for that increase in sales.

13 (2) The approved company shall have no obligation to refund or otherwise return any
14 amount of this sales and use tax refund to the persons from whom the sales and use tax
15 was collected.

16 (3) For all tourism attractions, the term of the agreement granting the sales and use tax
17 refund shall be ten years.

18 (4) This time period shall commence on the later of:

19 (A) The final approval of the agreement for purposes of the sales and use tax refund;
20 or

21 (B) The effective date specified in the agreement.

22 (b) Any sales and use tax collected by an approved company on sales transacted after final
23 approval but prior to the commencement of the term of the agreement shall be refundable
24 as if collected after the commencement of the term and applied to the approved company's
25 first year's refund after activation of the term and without changing the term.

26 (c) The total sales and use tax refund allowed to the approved company over the term of
27 the agreement shall be equal to the lesser of the total amount of the sales and use tax
28 liability of the approved company or 25 percent of the approved costs for the tourism
29 attraction project, subject to the following conditions:

30 (1) The sales and use tax refund shall accrue over the term of the agreement in an annual
31 amount equal to the lesser of the sales and use tax liability of the approved company for
32 that year or 2.5 percent of the approved costs; and

33 (2) Notwithstanding the 2.5 percent limitation of paragraph (1) of this subsection, any
34 unused sales and use tax refunds from a previous year may be carried forward to any
35 succeeding year during the term of the agreement.

36 (d) On or before March 31 of each year during the term of the agreement, an approved
37 company shall file with the department a claim for the sales and use tax refund collected

1 by the approved company and remitted to the department during the preceding calendar
2 year pursuant to subsection (c) of this Code section.

3 (e) The Department of Economic Development, in consultation with other appropriate
4 state agencies, shall promulgate administrative regulations and require the filing of a refund
5 form designed by the Department of Economic Development to reflect the intent of this
6 article.

7 48-8-244.

8 (a) The commissioner of economic development, in consultation with other appropriate
9 state agencies, shall establish standards for the filing of an application for tourism attraction
10 projects by the promulgation of administrative regulations.

11 (b) The commissioner of economic development shall consult with an advisory committee
12 consisting of the commissioner of community affairs, the state revenue commissioner, and
13 the director of the Office of Planning and Budget who shall assist and advise the
14 commissioner of economic development in his or her review of applications filed by
15 companies that are considering the development of a tourism attraction project. Within a
16 reasonable time period after receiving a completed application, the commissioner of
17 economic development shall make a determination as to whether the applicant meets the
18 requirements of the regulations, and the commissioner of economic development shall
19 recommend approval or denial of the application to the state revenue commissioner.

20 (c) An application for a tourism attraction project filed with the Department of Economic
21 Development shall include, but not be limited to, marketing plans for the tourism attraction
22 project that target individuals who are not residents of this state; a description and location
23 of such tourism attraction project; capital and other anticipated expenditures for such
24 tourism attraction project and the anticipated sources of funding of such project; the
25 anticipated employment and wages to be paid at such tourism attraction project; business
26 plans which indicate the average number of days in a year in which such tourism attraction
27 project will be in operation and open to the public; and the anticipated revenues to be
28 generated by such tourism attraction project.

29 (d) The commissioner of economic development and the local governing authority
30 specified in paragraph (2) of Code Section 48-8-241 may grant approval to the tourism
31 attraction project if the project shall:

32 (1)(A) Have approved costs in excess of \$25 million if such project is to be a new
33 tourism attraction.

34 (B) Have approved costs in excess of \$10 million if such project is to be a part of or
35 an addition to an existing tourism attraction, or, if the existing attraction can
36 substantiate an increase in visitation to the attraction by adding physical improvements

1 that are less than \$10 million, the expansion may be approved if the commissioner of
2 economic development determines that the project represents a significant positive
3 economic impact on the region and this state;

4 (2) Have a significant and positive economic impact on this state, considering, among
5 other factors, the extent to which the tourism attraction project will compete directly with
6 existing tourism attractions in this state and the amount by which increased state and local
7 tax revenues from the tourism attraction project will exceed the refund to be given to the
8 approved company;

9 (3) Produce sufficient revenues and public demand to be operating and open to the public
10 for a minimum of 120 days per year; and

11 (4) Not adversely affect existing employment in this state.

12 48-8-245.

13 (a) Upon final approval of a tourism attraction project, the Department of Economic
14 Development shall enter into an agreement with any approved company, which agreement
15 may also include as a partner any local development authority, and the terms and
16 provisions of each agreement shall include, but not be limited to:

17 (1) The projected amount of approved costs, provided any increase in approved costs
18 incurred by the approved company and agreed to by the department shall apply
19 retroactively for purposes of calculating the carry forward for unused sales and use tax
20 refunds as set forth in subsection (c) of Code Section 48-8-243 for tax years commencing
21 on or after the effective date of this article;

22 (2) A date certain by which the approved company shall have completed the tourism
23 attraction project and begun operations. Upon request from any approved company that
24 has received final approval, the Department of Economic Development shall grant an
25 extension or change, which in no event shall exceed 18 months from the date of final
26 approval, to the completion date as specified in the agreement with an approved
27 company; and

28 (3) The term shall be ten years from the later of:

29 (A) The date of the final approval of the tourism attraction project; or

30 (B) The original effective date specified in the agreement, if this effective date is
31 within three years of the date of the final approval of the tourism attraction project.

32 (b) If an approved company receives a refund under this article, the Department of
33 Economic Development may deny the right to claim other economic development
34 incentives consisting of income tax credits granted under Chapter 7 of this title that it may
35 otherwise be eligible to claim on its state income tax return, while in the process of
36 receiving the sales tax refund provided under this article."

SECTION 2.

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2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

SECTION 3.

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5 All laws and parts of law in conflict with this Act are repealed.